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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 DAVID TROUPE,

12 Plaintiff,

13 v.

14 WILLIAM SWAIN, et al.,

15 Defendant.

CASE NO. 16-5380 RJB-DWC

ORDER ADOPTING REPORT AND
RECOMMENDATION

16 This matter comes before the Court on the Report and Recommendation of U.S.
17 Magistrate Judge David W. Christel (Dkt. 64) and the Defendants' Motion to Strike (Dkt. 70).
18 The Court has considered the pleadings filed regarding the Report and Recommendation and
19 Defendants' Motion to Strike, and the remaining record.

20 The facts are in the Report and Recommendation (Dkt. 64) and are adopted here. The
21 Report and Recommendation recommends that all Plaintiff's claims against all Defendants,
22 except Defendants Stielau and DeHaven, be dismissed without prejudice for failure to exhaust
23 administrative remedies. Dkt. 64. The Report and Recommendation, then, recommends that the
24 Defendants' motion for summary judgment (Dkt. 48) be granted as to all Defendants except

1 Defendants Stielau and DeHaven. Dkt. 64. The Report and Recommendation recommends that
2 the Motion to Dismiss, filed by some of the Defendants - Van Ogle, Thrasher, Glebe, Roberts,
3 Herzog, DeMars, Dahne, and L'Heureux - (Dkt. 41) be denied as moot because the claims
4 against these parties are addressed in the motion for summary judgment.

5 Plaintiff filed Objections to the Report and Recommendation (Dkt. 65), Defendants filed
6 a Response (Dkt. 67) and Plaintiff filed a Reply to Defendants' Response (Dkt. 69). Defendants
7 filed a Motion to Strike Plaintiff's Reply (Dkt. 70) arguing that it was not authorized under the
8 Federal Rules of Civil Procedure or by statute. While the Defendants' motion to strike has merit,
9 in order to fully consider all issues raised, the motion to strike should be denied and the Court
10 will consider all pleadings filed by Plaintiff.

11 Plaintiff's objections, reply, and pleadings filed in support thereof, do not provide a basis
12 to reject the Report and Recommendation. Plaintiff's submissions demonstrate that he failed to
13 exhaust his administrative remedies on all claims except the claims against Defendants Stielau
14 and DeHaven based on their October 30, 2014 use of a six-point restraint bed on Plaintiff for
15 twelve hours. Moreover, Plaintiff makes no showing that he was prevented from filing
16 grievances or appealing those grievances. The Report and Recommendation (Dkt. 64) should be
17 adopted.

18 ORDER

19 Accordingly, it is **ORDERED** that:

- 20 • The Report and Recommendation (Dkt. 64) **IS ADOPTED**;
 - 21 ○ Defendants' Motion for Summary Judgment (Dkt. 48) **IS DENIED**
 - 22 **WITHOUT PREJUDICE** as to Defendants Stielau and DeHaven and **IS**
 - 23 **GRANTED** as to all remaining Defendants;
 - 24

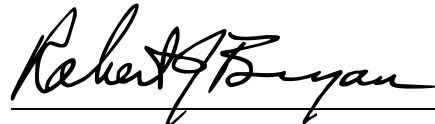
○ Claims against all Defendants, except Defendants Stielau and DeHaven,
ARE DISMISSED WITHOUT PREJUDICE;

○ Defendants' Motion to Dismiss, In Part, (Dkt. 41) **IS DENIED AS
MOOT;**

- Defendants' Motion to Strike (Dkt. 70) **IS DENIED;** and
- This matter **IS RE-REFFERED** to U.S. Magistrate Judge David W. Christel for further proceedings consistent with this Order.

The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any party appearing *pro se* at said party's last known address.

Dated this 27th day of December, 2016.



ROBERT J. BRYAN
United States District Judge